

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MDC S.p.A. d/b/a MASSIMODECARLO

Plaintiff,

No. 19 civ. 7159 (CM)

v.

DAVID SHUMAN,

Defendant.

ORDER

McMahon, J:

Counsel, there is no need for a conference. By failing to provide notice of the issue of foreign law either in the complaint, the amended complaint, or in any other timely manner pursuant to Fed. R. Civ. P. 44.1, Plaintiff has waived any ability to argue or prove that U.K. law governs this contract dispute.

The first that I have heard of any possibility that U.K. law might apply is June 2, 2021 – twelve days before an absolutely immovable trial date of June 14. The law in this Circuit is clear: “a litigant must provide the opposing party with reasonable notice that [a foreign law] argument will be raised” so as to “avoid unfair surprise.” *Rationis Enterprises Inc. of Panama v. Hyundai Mipo Dockyard Co., Ltd.*, 426 F.3d 580, 585–86 (2d Cir. 2005). A party who believes that foreign law applies must give notice at the earliest possible opportunity, and in any event well before trial – in my court, well before the close of discovery. Plaintiff has not done so. Additionally, by pleading a claim under the Uniform Commercial Code, Plaintiff has conceded that New York law (at least not U.K. law) applies.

The fact that choice of law never came up in counsel’s discussions, as plaintiff’s lawyer puts it in his letter of June 3, is irrelevant. Plaintiff was obliged to notify both counsel and the Court at an early moment in the course of litigation that he would seek to apply English law. The fact that defendant’s counsel knew an English solicitor to be involved in the background is not the sort of notice contemplated by Rule 44.1. Given the existence of a claim asserted under the UCC in the plaintiff’s pleadings, neither defendant nor the court could possibly have understood that plaintiff would take the position the UK law applied two weeks prior to trial.

There is simply nothing to discuss.

Dated: June 3, 2021
New York, New York



District Judge